

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shadman Khan	Team: Squad #12	CCRB Case #: 202002790	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/05/2019 1:55 PM, Tuesday, 02/05/2019 2:15 PM	Location of Incident: [REDACTED]	Precinct: 14	18 Mo. SOL 8/5/2020	EO SOL 3/22/2021	
Date/Time CV Reported Sun, 04/19/2020 5:29 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 04/19/2020 5:29 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Martin Hayes	24820	947769	CW T TF
2. Officers			
3. SGT Ramon Ciriaco	00214	936357	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Martin Hayes	Abuse: In front of West 39th Street and 5th Avenue in Manhattan, Police Officer Martin Hayes stopped § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Martin Hayes	Force: In front of West 39th Street and 5th Avenue in Manhattan, Police Officer Martin Hayes used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Martin Hayes	Force: In front of West 39th Street and 5th Avenue in Manhattan, Police Officer Martin Hayes hit § 87(2)(b) [REDACTED] against a vehicle.	[REDACTED]
D.POM Martin Hayes	Force: In front of West 39th Street and 5th Avenue in Manhattan, Police Officer Martin Hayes hit § 87(2)(b) [REDACTED] against a wall.	[REDACTED]
E. Officers	Abuse: In front of West 39th Street and 5th Avenue in Manhattan, officers did not obtain medical treatment for § 87(2)(b) [REDACTED]	[REDACTED]
F.SGT Ramon Ciriaco	Abuse: Inside the 14th Precinct stationhouse, Sergeant Ramon Ciriaco did not obtain medical treatment for § 87(2)(b) [REDACTED]	[REDACTED]
G. Officers	Abuse: Inside the 14th Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On April 19, 2020, § 87(2)(b) filed this complaint at the CCRB using the online website.

On February 5, 2019, at approximately 1:55pm, in the vicinity of West 39th Street and 5th Avenue in Manhattan, § 87(2)(b) was in the process of crossing 5th Avenue when he was stopped by PO Martin Hayes from the Citywide Traffic Task Force (**Allegation A - Abuse of Authority: Stop, § 87(2)(g)**). PO Hayes grabbed § 87(2)(b)'s arm from behind and took him back across 5th Avenue and toward a marked NYPD vehicle (**Allegation B - Force: Physical Force, § 87(2)(g)**). PO Hayes pushed § 87(2)(b) against the front of the NYPD marked vehicle (**Allegation C - Force: Physical Force, § 87(2)(g)**).

PO Hayes pushed § 87(2)(b) against a wall and handcuffed him (**Allegation D – Force: Physical Force, § 87(2)(g)**). § 87(2)(b) was placed in a second marked vehicle with two unidentified officers from the 14th Precinct. While in the vehicle, § 87(2)(b) asked both officers for medical treatment. Neither officer responded to § 87(2)(b) (**Allegation E-Abuse of Authority: Refusal to obtain medical treatment, § 87(2)(g)**).

Once at the 14th Precinct stationhouse desk, § 87(2)(b) asked the desk sergeant, Sgt. Ramon Ciriaco from the 14th Precinct, for medical treatment. Sgt. Ciriaco did not respond to § 87(2)(b) (**Allegation F - Abuse of Authority: Refusal to obtain medical treatment, § 87(2)(g)**). After § 87(2)(b) was lodged in a holding cell, he asked two other unidentified officers for medical treatment. The unidentified officers did not respond to § 87(2)(b) (**Allegation G - Abuse of Authority: Refusal to obtain medical treatment, § 87(2)(g)**).

As a result of this incident, § 87(2)(b) was issued a summons for disorderly conduct (Board Review 13).

No Body-Worn Camera (BWC) footage was recovered for this case. Video footage obtained in this case was recorded by cameras of the NYPD's Technical Assistance and Response Unit (TARU) (Board Review 06) and summarized (Board Review 11).

Findings and Recommendations

Allegation (A) Abuse of Authority: In front of West 39th Street and 5th Avenue in Manhattan, Police Officer Martin Hayes stopped § 87(2)(b)
Allegation (B) Force: In front of West 39th Street and 5th Avenue in Manhattan, Police Officer Martin Hayes used physical force against § 87(2)(b)

It is undisputed that on February 5, 2019, at approximately 1:55 p.m., in front of West 39th Street and 5th Avenue in Manhattan, § 87(2)(b) walked across West 39th Street when PO Hayes made a right turn and drove toward § 87(2)(b) spat toward PO Hayes' vehicle's windshield, turned left, and walked onto 5th Avenue. PO Hayes pulled over to the side of West 39th Street and ran after § 87(2)(b). PO Hayes grabbed § 87(2)(b) by the arm in order to stop § 87(2)(b). § 87(2)(b) turned him around, and held § 87(2)(b) by the arm as he walked him toward his police vehicle.

In § 87(2)(b)'s statement (Board Review 01) to the CCRB, he stated that prior to this incident in 2017, he suffered a traumatic brain injury. Due to this injury, § 87(2)(b) wore heavy-duty sunglasses that assisted with his visual impairment caused by the traumatic brain injury. When § 87(2)(b) filed this complaint, he stated that the traumatic brain injury impacted his sensory

perception and heightened his sense of alarm. On the date of the incident, § 87(2)(b) had been on his way to physical therapy for the traumatic brain injury. § 87(2)(b) walked across West 39th Street when he noticed PO Hayes' vehicle bumper approaching him and believed it would strike him, which he stated caused him to unintentionally spit toward the vehicle windshield. § 87(2)(b) continued to cross West 39th Street and turn left to cross 5th Avenue. § 87(2)(b) walked halfway across 5th Avenue when PO Hayes grabbed him from behind by placing both of his hands around his torso and turned both himself and § 87(2)(b) around to face the southeast corner of West 39th Street and 5th Avenue. § 87(2)(b) stated that he was not aware of PO Hayes' presence until PO Hayes made physical contact with him. Additionally, § 87(2)(b) did not know that PO Hayes was an officer at the time because he was unable to see PO Hayes due to the way he was grabbed. PO Hayes did not identify himself to § 87(2)(b). PO Hayes continued to hold § 87(2)(b) as he pushed him on his upper back using his upper chest, which forced § 87(2)(b) to walk toward the street.

In PO Hayes' statement (Board Review 05) to the CCRB, he stated that after § 87(2)(b) spat on his windshield, he instructed § 87(2)(b) to stop through an open window while he was inside the vehicle. § 87(2)(b) did not acknowledge PO Hayes and continued to walk away. He then pulled over to the side of the street, instructed § 87(2)(b) to stop again, and informed him that he was a police officer. He ran after § 87(2)(b) and grabbed him from behind by holding his left arm and left shoulder. § 87(2)(b) attempted to pull away from PO Hayes when he was first grabbed. PO Hayes instructed § 87(2)(b) to walk with him to the sidewalk, but § 87(2)(b) refused to do so. PO Hayes continued to hold him by the left arm and shoulder and walked with him toward his vehicle. § 87(2)(b) resisted this by attempting to walk back in the direction he was initially walking and trying to pull his arm away.

§ 87(2)(b) provided the investigation with TARU camera footage (Board Review 06). This footage does not contain audio. In the TARU camera footage, PO Hayes' vehicle – an NYPD scooter – can be seen driving through the intersection at 25m26s of the playback timer, and § 87(2)(b) walks in front of the vehicle approximately four seconds later. § 87(2)(b) appears to walk at the same speed throughout. At 25m35s of the playback timer, PO Hayes is seen exiting his vehicle and running to the left and out of the frame. The video does not depict when PO Hayes initiates physical contact with § 87(2)(b). At 26m05s of the playback timer, PO Hayes returns and is seen holding § 87(2)(b) with § 87(2)(b) standing in front of PO Hayes, from behind and walking with him towards his vehicle. PO Hayes appears to be using both hands to hold § 87(2)(b) by the left arm. § 87(2)(b) appears to be leaning slightly backwards against PO Hayes with his upper back, causing his upper body to make contact with PO Hayes' chest, and waving his right hand in front of him as they walk toward PO Hayes' vehicle.

According to PO Hayes, he was not equipped with a BWC at the time of the incident. A review of the BWC Deployment Roster confirmed that he did not have a BWC as of March 6, 2019.

According to NYC Administrative Code Section 16-118(1)(b) (Board Review 07), public spitting is a violation.

According to Patrol Guide Procedure 221-01 (Board Review 12), officers may use the reasonable force necessary to gain control or custody of the subject. Actively resisting custody is one of the factors used to determine if the use of force is reasonable.

It is undisputed that § 87(2)(b) spat in public, a violation of NYC Administrative Code 16-118(1)(b). § 87(2)(g)

§ 87(2)(g)

all parties agree about the level of force employed by PO Hayes, namely that PO Hayes held § 87(2)(b) from behind and moved § 87(2)(b) towards his vehicle. TARU footage does not depict the moment when PO Hayes made physical contact with § 87(2)(b) but did depict PO Hayes holding § 87(2)(b) as alleged. Further, the TARU footage depicts § 87(2)(b) leaning his body in the original direction he had been walking while PO Hayes forcefully walks § 87(2)(b) in the opposite direction towards his vehicle. § 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: In front of West 39th Street and 5th Avenue in Manhattan, Police Officer Martin Hayes hit § 87(2)(b) against a vehicle.

Allegation (D) Force: In front of West 39th Street and 5th Avenue in Manhattan, Police Officer Martin Hayes hit § 87(2)(b) against a wall.

§ 87(2)(b) stated that PO Hayes pushed him to the front of PO Hayes' vehicle and pushed his body against the front of it. PO Hayes shouted at § 87(2)(b) and pushed him against a wall until other officers arrived.

PO Hayes stated that after he walked § 87(2)(b) back toward his vehicle, he asked for his ID and cooperation. § 87(2)(b) refused to cooperate and refused to provide him with an ID. PO Hayes held onto § 87(2)(b)'s arm and shoulder while he asked § 87(2)(b) to explain why he spat on his vehicle. PO Hayes denied pushing § 87(2)(b) against the front of his vehicle. PO Hayes denied pushing § 87(2)(b) against a wall at any point. Once a supervisor and multiple other officers arrived, PO Hayes arrested § 87(2)(b). Two officers from the 14th Precinct who PO Hayes could not identify arrived and transported § 87(2)(b) to the 14th Precinct stationhouse.

The TARU camera footage depicted PO Hayes pushing § 87(2)(b) towards his vehicle. The camera's view of PO Hayes and § 87(2)(b) was then obstructed by a structure and poor lighting at the 26m13s mark. As such, this portion of the interaction is not depicted.

As noted above, PO Hayes was not equipped with BWC at the time of incident.

§ 87(2)(g)

Allegation (E) Abuse of Authority: In front of West 39th Street and 5th Avenue in Manhattan, officers did not obtain medical treatment for § 87(2)(b)

In a telephone statement (Board Review 02), § 87(2)(b) he stated that he requested medical treatment once from the two officers that were transporting him to the 14th Precinct stationhouse in their marked vehicle. Neither officer responded to § 87(2)(b). In his statement, § 87(2)(b) identified one of the officers as a white male.

In PO Hayes' statement, he stated that a unit from the 14th Precinct transported § 87(2)(b) to their stationhouse because PO Hayes operated a scooter in which he could not lodge § 87(2)(b). PO Hayes did not know the identity of these officers. § 87(2)(b) informed PO Hayes of several medical conditions that he had, including traumatic brain injury that he suffered from. This information was provided to an unidentified supervisor who responded to the location. § 87(2)(b) was offered medical attention multiple times, which he declined because he was on his way to an appointment.

The TARU footage depicted three officers lodging § 87(2)(b) in a marked vehicle, but the vehicle number and officer identities are unclear.

A request for Events documentation was returned with a notation that the documents were no longer available (Board Review 13).

The investigation received the 14th Precinct Command Log (Board Review 14) contains an entry for § 87(2)(b). While it lists PO Hayes as § 87(2)(b)'s arresting officer, it does not list which officers transported him to the 14th Precinct stationhouse. The Command Log also lists § 87(2)(b)'s condition as apparently normal, and noted that he did not request medical attention.

§ 87(2)(g)

Allegation (F) Abuse of Authority: Inside the 14th Precinct stationhouse, Sergeant Ramon Ciriaco did not obtain medical treatment for § 87(2)(b)

In the call placed to § 87(2)(b) he stated that at the 14th Precinct stationhouse desk, he asked the desk sergeant, Sgt. Ciriaco, for medical attention but did not receive it.

As noted above, the 14th Precinct Command Log contains an entry for § 87(2)(b) on the date of incident, but the entry does not indicate that any medical treatment was requested or obtained.

Sgt. Ciriaco provided a statement to the CCRB (Board Review 04) to the CCRB. Sgt. Ciriaco was not equipped with BWC on the date of incident. He did not recall any male who was transported to the 14th Precinct stationhouse by two officers or any male asking him for medical treatment on the date of the incident. When shown the 14th Precinct Command Log for the date of the incident, Sgt. Ciriaco affirmed that the entry regarding § 87(2)(b) was in his handwriting, but he did not recall making the entry. He stated that if a prisoner had made a request for medical attention, he would have made a notation in the margin of the Command Log noting the request. There was, however, no such notation.

As noted above, PO Hayes reported that he relayed information about § 87(2)(b)'s medical conditions to an unidentified supervisor on scene. While on scene, § 87(2)(b) was offered medical attention multiple times, but declined because he was on his way to an appointment.

The investigation requested the 14th Precinct stationhouse video on April 22, 2020 but stationhouse footage was not available due because such footage is only retained for 30 days and § 87(2)(b) filed this complaint 14 months after the date of the incident.

As noted in Allegations A and B, because PO Hayes was not equipped with a BWC during the time of the incident, no BWC footage of his arrest processing was available.

§ 87(2)(g)

Allegation (G) Abuse of Authority: Inside the 14th Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) stated that in the hour he was lodged in a holding cell, he requested medical treatment from two unidentified officers at two different times. Neither officer responded to § 87(2)(b)'s requests. § 87(2)(b) described one of the officers as a heavy-set white male and the other officer only as a male.

The 14th Precinct Prisoner Holding Pen Roster (Board Review 16) and Command Log list § 87(2)(b) as a prisoner and PO Hayes as the officer that guarded him. The Prisoner Holding Pen Roster also lists the time of § 87(2)(b)'s release. Neither document lists any officer other than PO Hayes as being associated with § 87(2)(b) during this time.

As mentioned in the discussion of Allegation F, the investigation did not receive any stationhouse footage from the 14th Precinct due to the complaint being filed one year and two months after the date of the incident.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 08).
- PO Hayes has been a member-of-service for twelve years and has been a subject in six CCRB complaints and fourteen allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Ciriaco has been a member-of-service for fifteen years and has been a subject in one CCRB complaint and two allegations, neither of which was substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York (Board Review 03). A 50H hearing was conducted on August 28, 2019.
- § 87(2)(b)

§ 87(2)(b) [Redacted]
• § 87(2)(b), § 87(2)(a) CPL 160.50 [Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad No.: 12

Investigator:	<u>Shadman Khan</u> Signature	<u>Investigator Shadman Khan</u> Print Title & Name	<u>March 3, 2021</u> Date
Squad Leader:	<u>Carlmais Johnson</u> Signature	<u>IM Carlmais Johnson</u> Print Title & Name	<u>March 3, 2021</u> Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date